  
Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

1667-2111  
JUL 2 1997

IN THE MATTER OF )

)  
FEDERAL-STATE JOINT-BOARD ON )  
UNIVERSAL SERVICE )

CC Docket No 96-45

)  
FCC 97-157

**PETITION FOR RECONSIDERATION AND CLARIFICATION**

**NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE**  
31 Clinton Street  
P.O. Box 46005  
Newark, New Jersey 07101

**Blossom A. Peretz, Esq.**  
Ratepayer Advocate

**Heikki Leesment, Esq.**  
Deputy Ratepayer Advocate

**Lawanda R. Gilbert, Esq.**  
Assistant Deputy Ratepayer Advocate

## INTRODUCTION

Pursuant to 47 C.F.R. § 1.429, the New Jersey Division of the Ratepayer Advocate ("Ratepayer Advocate") respectfully submits this Petition for Reconsideration and Clarification of certain sections of the Federal Communications Commission's (FCC) *Report and Order*, FCC 97-157, issued *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45. ("Universal Service Order" or "Order"). The Order promulgates rules to implement the universal service requirements of the Telecommunications Act of 1996, 47 U.S.C. §151 et seq. ("Act"), and is the final process of the continuing FCC proceeding to implement the universal service provisions of the Act.

The Ratepayer Advocate is a newly reorganized agency pursuant to the New Jersey Reorganization Plan No. 001-1994. Our role, to protect and advance the interest of residential ratepayers in New Jersey, has been broadened to include representation of all classes of ratepayers -- residential, commercial and industrial-- and to be more involved in the policy and planning of laws and regulations which impact all New Jersey ratepayers. Our new mandate in the area of policy and planning is designed to afford the consumer a stronger voice in long range utility planning for the state.

On March 8, 1996, the FCC released a *Notice of Proposed Rulemaking and Order Establishing Joint Board*<sup>1</sup> which initiated the Federal-State Joint Board on Universal Service ("Joint Board") and the subsequent review procedure to implement the universal service provisions mandated under the Telecommunications Act. Subsequently, the Joint Board

---

<sup>1</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-25 (61 Fed. Reg. 10499 (1996)).

released its Recommended Decision on November 8, 1996.<sup>2</sup> As required by the Act,<sup>3</sup> the FCC completed the review proceeding on May 8, 1997 with the release of its Report and Order containing the final rules.<sup>4</sup>

The Ratepayer Advocate requests that the FCC: 1) reconsider the proposed utilization of unused funds accumulated for purposes of affording discounts for telecommunications services to schools and libraries; and 2) clarify its stated "first come-first served" policy for funding benefits to schools and libraries, to ensure equitable distribution of monies among all states contributing to the fund.

**I. THE COMMISSION SHOULD CLARIFY THE UTILIZATION OF UNUSED FUNDS FOR CALENDAR YEARS 1998 AND 1999 ALLOCATED TO PROVIDE DISCOUNTS FOR SCHOOLS AND LIBRARIES TO ENSURE THAT INTRASTATE JURISDICTIONAL REVENUES DO NOT REVERT TO THE F.C.C.**

Section 254(d) of the Telecommunications Act provides that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."

---

<sup>2</sup> Recommended Decision, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-25 (61 Fed. Reg. 63778 (December 2, 1996)). The FCC also released a Public Notice on November 18, 1996 (61 Fed. Reg. 63778 (December 2, 1996)) seeking public comment on rules to implement the universal service provisions of the Act.

<sup>3</sup> 47 U.S.C. 254(a)(2).

<sup>4</sup> Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-25. The final rules were printed in the Federal Register on June 17, 1997. (62 Fed. Reg. 32862)

Included among the services which will be supported from these contributions are the discounts for telecommunications services provided to schools and libraries, as mandated by the Act.<sup>5</sup>

With respect to unused funds, Section 54.507(a) of the Final Rules contained in the Universal Service Order requires that they are to be carried forward to the following year, except for two cases:

[N]o more than half of the unused portion of the funding authority for calendar year 1998 shall be spent in calendar year 1999, and no more than half of the unused funding authority from calendar years 1998 and 1999 shall be spent in calendar year 2000.

62 Fed. Reg. 32956.

Thus, in the event that the total amount of funds collected for the calendar years 1998 and 1999 are not fully expended, the Order states that only 50% of the unused funds can be allocated to the funding requirements for the following year. However, the Order does not provide any information on the utilization of the other half of those unused funds. The current wording of the rules would lead one to conclude that the remaining portion of the unused funds that are not carried over to the following year would remain with the fund administrator, and could possibly revert to the FCC. It is unclear from the Order for what purpose the remaining funds will be used.

This issue is of particular concern for the States due to the requirement of Section 54.703 of the Final Rules of the Universal Service Order that the contributions to be collected from the telecommunications carriers for the support of discounted services for schools and libraries will be assessed “on the basis of its interstate, **intrastate**, and international end-user

---

<sup>5</sup> 47 U.S.C. 254(h)(1)(B).

telecommunications revenues.”<sup>6</sup> A review of statistics regarding telecommunications industry revenue indicates that intrastate revenues, on a whole, constitutes more than interstate and international revenues combined. In 1995, the FCC reported that carriers classified 43.3% of their revenue as interstate (including international), with the remaining 57% of revenues being intrastate jurisdictional revenues.<sup>7</sup> Thus, the majority of funding provided for school and library discounts will be derived from intrastate revenues,<sup>8</sup> which traditionally have been the exclusive province of State regulatory authority.

While States, through their approval of the FCC’s discount matrix, are thereby permitting the FCC to reach into intrastate jurisdictional funds for purpose of funding discounts to schools and libraries, they are not intending to contribute their jurisdictional monies for support of other federal purposes. Excess funds (unspent funds) should continue to be fully available to the States for funding future discounts to schools and libraries. If the FCC’s funding mechanism is unable to fully expend State jurisdictional monies for these purposes, the funds should be restored to the States from which the funds were accumulated in order that State regulatory authority may use these monies for public purposes.

The Ratepayer Advocate therefore requests that the FCC reconsider and revise these provisions of its Order to provide specific guidance for proper disposition of intrastate

---

<sup>6</sup> 62 Fed. Reg. 32961.

<sup>7</sup> Federal Communications Commission, *1995 Telecommunications Industry Revenue Data from Telecommunications Relay Services Worksheets*, Common Carrier Bureau, Industry Analysis Division (released 12/96).

<sup>8</sup> 62 Fed. Reg. 32909 (¶340).

jurisdictional revenues that remain unspent for calendar years 1998 and 1999, and delineate a process for the States being able to reclaim these funds.

**II. THE COMMISSION SHOULD CLARIFY THE CURRENT DISTRIBUTION SCHEME FOR FUNDING DISCOUNTS FOR SCHOOLS AND LIBRARIES AND PROVIDE GUIDELINES THAT WILL ENSURE EQUITY IN THE DISTRIBUTION OF THE FUNDS AMONG THE STATES.**

Section 54.507(c) of the Final Rules in the Universal Service Order provides that:

“Funds shall be available to fund discounts for eligible schools and libraries and consortia of such eligible entities on a first-come-first-served basis”.<sup>9</sup> Thus, the success of a school or library in being awarded funding is partly based upon their speed in the filing of their application. That success however, is also affected by the fact that the Final Rules cap the amount of funds which can be provided at \$2.25 billion.<sup>10</sup> Additionally, there are special provisions which reserve the final \$250 million allocated for a funding year to the most economically disadvantaged schools and libraries.<sup>11</sup>

In light of this procedure and the pressing needs of education throughout the nation, it appears possible, perhaps even likely, that a given State whose intrastate revenues were assessed for contributions to the universal service fund would not receive any funding for a particular year, if applications from schools or libraries of that State were not assigned a high enough priority prior to the exhaustion of the available funding. Thus, currently there is no certainty

---

<sup>9</sup> 62 Fed. Reg. 32956.

<sup>10</sup> See 47 C.F.R. §54.507(a).

<sup>11</sup> See 47 C.F.R. §54.507(f).

that each state will be able to recoup some portion, or indeed, any portion of its share of contributions paid into the universal service fund. Although the FCC's proposed procedure attempts to distribute available funds fairly on a first-come-first-served basis, in reality, it leaves room for inequity among the states since there is no acknowledgment that each State will be able to receive an adequate amount, or indeed, any amount of funding.

The Universal Service Order currently does not contain any guidance that there should be some consideration accorded between the amount which States contribute to the fund, relative to the amount which they will receive. The lack of such an assurance may bring into question the ability of a State to place its support behind such a system without any balance to provide for some measure of equitable distribution among the States; and may make it difficult, if not impossible, politically to support the current structure. While a precise dollar-for-dollar correlation between funds received and funds disbursed for each State may not be necessary, guidelines to the fund administrator to ensure that every State contributing to the fund derives some benefit roughly comparable to its contribution would be in order.

The Ratepayer Advocate therefore requests that the FCC review the provisions contained in the current funding scheme and issue clarifying guidance to the fund administrator, directing that the amount of funding provided by individual States be considered when acting upon funding requests for discounts from schools and libraries. Only in this matter can States be reassured that the needs of all States and individual constituents are being met on an equitable basis.

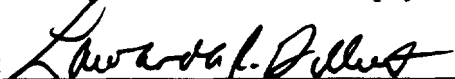
## CONCLUSION

The Final Rules provide that funding for discounts for schools and libraries will be provided by assessments from telecommunications carriers based upon both their interstate and intrastate revenues. Intrastate revenues have traditionally been the exclusive jurisdiction of the respective State regulatory commissions. To the extent that individual States permit the FCC to assess intrastate revenues for purposes of creating the federal universal service fund for the support of schools and libraries, State jurisdictional funds should be used exclusively for that purpose and unspent funds should not revert to the federal government.

Currently, the rules are unclear as to what the States will receive under the fund in two separate areas: 1) the rules provide no assurance that the intrastate portion of unused funds will either be carried over to the following calendar year or will be returned to the States; and 2) the rules do not provide for equitable distribution of the funding for schools and libraries across the States, based upon the funding provided by the States through their respective intrastate revenues. The FCC should clarify these two issues to ensure the integrity of intrastate jurisdictional revenues and equity among the States in the receipt of benefits from the fund.

Respectfully submitted,

Blossom A. Peretz  
Ratepayer Advocate  
New Jersey Division of the Ratepayer Advocate

By:   
Lawanda R. Gilbert, Esq.  
Assistant Deputy Ratepayer Advocate

Dated: July 16, 1997